FARAD CONTINUATION SHEET NO.:
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Review Petition No.1 of 2006
In
PIL No.39 of 2003
W i t h
Civil Application No.62 of 2006
In
PIL No.39 of 2003

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.D.J.Khambata, Sr.Advocate with Ms.Malika Iyer i/by M/s.Federal & Rashimkant for petitioners.

Mr.S.R.Nargolkar, AGP for State.

Mr.Prakash Shah i/by PDS for respondent No.2.

Mr.N.D.Sharma for Union of India.

Mr.Uday Warunjikar for respondent No.13.

Mr.Ganesh Gole for respondent No.2.

Mrs.Sadhana Mahashabade for respondent No.10.

CORAM : H.L GOKHALE &
J.P.DEVADHAR, JJ.

DATED : 12th January 2007

P.C. :

1. Heard the learned Counsel for the parties.

2. This Review Petition is

filed by the petitioners in PIL No.39 of 2003 which has been disposed of by our judgment rendered on 19th October 2006. In paragraph 49 of this judgment, we dealt with the objection which the petitioners had raised with respect to the three properties. They were Malcolm Cottage, The Oaks and Four Oaks. The objection of the petitioners was that in view of Bye-law No.20.3.1(b) of the Bye-laws of the Mahabaleshwar Municipal Council, in properties of 0.4 Hectare area and above, there had to be only one main structure. As far as Malcolm Cottage and the Oaks are concerned, there was only one main structure and no new construction was coming up. The problem, therefore, remained only about four Oaks wherein many structures were stated to be existing. In this paragraph, we have accepted the submission of the petitioners

with respect to the interpretation of the said bye-law and we have declined to dilute the said objection. At the same time, we have taken note of the fact that the amendment of the relevant bye-law has been proposed as pointed out by Mr.Nargolkar, AGP. It is in this context that thereafter we have made the following observation:-

> "It will be for the Municipal Council to consider it as relevant material (though the plan is not published)."

The Review Petition seeks to recall this conclusion that is the prayer in prayer clause (a) of the Review Petition.

3. We have made that observation considering the law laid down by the Apex Court in the

case of **S.N.Rao & ors. vs. State of Maharashtra & ors. reported in AIR 1988 S.C. 712**. That was a judgment on interpretation of Section 46 of the M.R.T.P. Act. In that matter as stated in para-8 of the judgment of the Apex Court, at the relevant time the Municipal Commissioner rejected the plan submitted by the owner of the land. The draft revised development plan was in contemplation though it was not in existence. The Apex Court held that it was permissible for the Municipal Commissioner to consider all such relevant factors. It is on that footing that we have made the aforesaid observation and it should be read as such. The observation is made in the context of the objection raised by the petitioners concerning the construction in the property of four Oaks.

4. In the circumstances, there is no need to recall the aforesaid conclusion made in paragraph 49 of our judgment. The Review Petition is, therefore, rejected.

(H.L.GOKHALE, J.)

(J.P. DEVADHAR, J.)